



NORTH CAROLINA

State Board of Elections & Ethics Enforcement

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CONFIDENTIAL FORMAL ADVISORY OPINION

June 6, 2018

Mr. Rick Van Sant
Executive Director
Go Global NC
Box 13628
Research Triangle Park, NC 27709

Re: Paying Expenses of Legislators and Public Servants to Participate in the 2018 Global Leaders Program to Germany
AO-E-18-001

Dear Mr. Van Sant:

This is in response to your May 21, 2018, request for a formal advisory opinion. You have asked whether the gift ban of the Elections and Ethics Enforcement Act ("the Act"), G.S. Chapter 163A, Subchapter II, would allow lobbyist principals to pay some of the travel expenses of legislators and public servants participating in the 2018 Global Leaders Program ("the Program") sponsored by Go Global NC ("Go Global").

This formal advisory opinion is based on and limited to the facts set forth below and was adopted by the State Board of Elections and Ethics Enforcement ("the Board") at its June 6, 2018, meeting.¹

I. Brief Conclusion

The Board has determined that the Program qualifies as an educational meeting and is related to the public duties of attending legislators, and that the additional meeting requirements of G.S. 163A-212(f)(3)a.-d. will be satisfied. Therefore, lobbyist principals may donate funds to pay for the reasonable actual travel expenses of participating legislators and the travel expenses of public servants if related to the public servant's job duties; and those officials may accept those expenses.

II. The Facts

Go Global is planning the 2018 GL Program to Germany: "Unleashing North Carolina's Human Potential." That Program will allow participants to study economic development in Germany with the goal of spurring North Carolina economic development by expanding opportunities for

¹ Please see the enclosure entitled "Formal Advisory Opinions Issued by the State Board of Elections and Ethics Enforcement" for further information regarding the protections offered to individuals receiving those opinions.

working parents' participation in the workforce. This is the eighth international study trip in the Global Policy Series.

Approximately 20 individuals are expected to participate in the Program. The Mariam and Robert Hayes Charitable Trust will pay a portion of the travel expenses of four-to-five North Carolina legislators and possibly other State officials subject to the Act, including air and ground transportation, meals, and lodging expenses. The Charitable Trust is not a registered lobbyist principal and does not do business with the State.

Go Global is seeking additional sponsors to defray the travel costs of attending legislators and public servants, including registered lobbyist principals. However, none of those sponsors will be involved in the planning or administration of the Program or the selection of participating legislators or public servants.

Other Program participants include local elected officials, two Go Global employees, and representatives from various North Carolina businesses, educational institutions, and State agencies. Those participants will be charged \$5,995 plus airfare of approximately \$1,500.

The Program will focus on the following aspects of German economic development:

- childhood education research, models, and ideas;
- paid leave;
- innovations in flexible work structures; and
- strategies to attract and retain women in the STEM (Science, Technology, Engineering, and Math) fields.

The Program will also provide an opportunity for participants to develop relationships with private citizens, government officials, and business leaders to facilitate collaboration.

The trip is not related to a legislative or executive action.

The travel itinerary of the Program, excluding travel time to and from Germany and a pre-trip orientation session, consists of seven-to-ten hours of scheduled activities a day spanning a five-day period from Monday, September 24, 2018, to Friday, September 28, 2018.

Scheduled Program activities include a visit to a company that has developed workplace innovations to increase the number of parents in the workforce; visits to educational institutions including the Leipzig University of Applied Sciences and the Ludwigsburg University of Education; meetings and roundtable discussions with representatives from the German Institute for Economic Research, the Social Science Research Center, the Business Professional Women of Germany, the SHE VIP Luncheon Group, the Institute for Social Work and Social Education, the Women Entrepreneur's Association, and the Leipzig Research Center for Early Childhood Development; and meetings with government officials at the U.S. Embassy and the German National Legislature and the Ministry of Labor and Social Affairs.

Prior to the trip, participants will be required to read background materials and attend an orientation on the German economy, paid leave and early childhood education policies, labor force

participation, and cultural attitudes toward employment and family. Upon their return, participants will attend a full-day debriefing session and explore ways in which the knowledge gained can be applied to enhance economic development in North Carolina.

The Program includes optional cultural and historical tours on Saturday, September 29th. However, all participants will be required to pay their lodging costs for Saturday evening along with activity fees and associated food, beverage, and transportation expenses.

III. Applicable Law

The Act prohibits a lobbyist, lobbyist principal, or legislative liaison from giving direct or indirect gifts (“anything of monetary value”), to legislators, legislative employees, and public servants, unless an exception to the gift ban listed in G.S. 163A-212(f) applies. Legislators and public servants are also restricted from accepting those gifts. G.S. 163A-212(c). State entities, such as Go Global, are not subject to the gift ban. G.S. 163A-212(c).

One of the gift ban exceptions, G.S. 163A-212(f)(3), allows a lobbyist principal to pay for “reasonable actual expenditures” incurred in connection with a public servant’s, legislator’s, or legislative employee’s attendance at the four types of meetings listed in that exception. G.S. 163A-212(f)(3)(i) allows the payment of expenses incurred for attending *an educational meeting* “for purposes primarily related to the public duties and responsibilities of the covered person” Permissible expenses include food, beverages, registration, travel, lodging, incidental items of nominal value, and incidental entertainment.

The following non-exclusive factors are considered in determining whether a meeting is an “educational meeting”:

- 1) whether the meeting’s primary purpose is to promote learning for professional improvement or to influence a particular legislative or official action,
- 2) whether the meeting’s organizer is an educational or governmental institution or a lobbyist principal,
- 3) whether a lobbyist principal organizing the meeting also seeks to pay the meeting expenses of attending legislators, legislative employees, or public servants,
- 4) the proportion of educational content relative to meals and entertainment provided at the meeting and the proportion of presenters who are outside experts or are independent from any lobbyist principal seeking to pay for the meeting expenses,
- 5) the relationship between the meeting’s location and its educational purpose, and
- 6) the relationship between the meeting’s length and its educational purpose.

In addition to the specific educational meeting criteria outlined above, G.S. 163A-212(f)(3)a.-d. requires that the meeting: (a) be attended by at least 10 or more participants, have a formal agenda, and be noticed at least 10 days in advance; and (b) that any food, beverages, transportation, or entertainment provided at the meeting be available to all attendees or defined groups of 10 or more attendees. Any entertainment provided “must be incidental to the principal agenda of the meeting.”

The “reimbursement exception” would also allow lobbyist principals to pay the travel expenses of participating public servants if the expenses are preapproved by the agency as work-related and are the types of expenses that would otherwise be reimbursed by the State. G.S. 163A-212(g).

IV. Analysis

Based on a review of the itinerary for the Program, the Board finds that the Program’s content is related to the public duties of invited legislators and may be related to the duties of attending public servants, depending on their job responsibilities.

Moreover, the Program complies with the educational meeting criteria of G.S. 163A-212(f)(3)(i). Factors that support the educational purpose of the meeting include the following: (a) the meeting agenda includes a wide variety of presentations and site visits to governmental, business, and educational institutions, (b) the meeting is not related to a particular legislative or official action, (c) the meeting is scheduled with educational content throughout each day and includes basic meal activities and no entertainment, and (d) the meeting location and length is closely related to its educational goals.

You have also stated that there will be at least 10 participants in the Program and that food, beverages, and transportation will be provided to all participants. In addition, the trip has a formal agenda and will have been noticed at least 10 days in advance. Thus, the Program complies with the general meeting requirements imposed by G.S. 163A-212(f)(3)a.-d.

Therefore, it is permissible for registered lobbyist principals to donate funds for the travel expenses of participating legislators, including food and beverages, lodging, transportation expenses (including air and ground transportation), and incidental items of nominal value. Such expenses may also be donated for the participation of public servants if job-related.

V. Closing

Thank you for contacting the State Board of Elections and Ethics Enforcement. Please do not hesitate to call the Board’s staff if you have any questions about the foregoing formal advisory opinion.

State Board of Elections and Ethics Enforcement

By: J. Anthony Penry, Chair



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Formal Advisory Opinions Issued by the State Board of Elections and Ethics Enforcement

Upon the written request of a public servant or legislative employee, G.S. 163A-157(a) of the Elections and Ethics Enforcement Act ("the Act") authorizes the State Board of Elections and Ethics Enforcement ("Board") to issue formal advisory opinions on the "meaning and application" of the ethics provisions of the Act and a public servant's or legislative employee's compliance with the Act. Legislators may also request a recommended formal advisory opinion that is subject to review by the Legislative Ethics Committee ("the LEC"). G.S. 163A-157(e).

In addition, upon the written request of any affected person, State agency, or governmental unit, G.S. 163A-252(a) authorizes the Board to issue formal advisory opinions "on the meaning and application" of the lobbying provisions of the Act and "that person's, State agency's or any other governmental unit's compliance therewith."

Formal advisory opinions issued by the Board have prospective application only and must relate to "real or reasonably anticipated fact settings or circumstances." Reliance upon a formal advisory opinion immunizes the requestor from (1) investigation by the Board, except the alleged violation of criminal law by covered State officials while performing their official duties, and (2) adverse action by the requestor's employing entity. G.S. 163A-157(c) and 163A-252(b)

Once issued by the Board, all formal advisory opinions are published in an edited format on the Board's website within 30 days of issuance. Requests for formal advisory opinions, the opinions themselves, and all materials related to the opinions are confidential and are not public records. G.S. 163A-157(i) and 163A-252(e).